

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

CHARLES BRAINARD,

ECF Case

Plaintiff,

- against -

Case No. 07 CIV 8535 (LBS)

KENYON & KENYON LLP, the KENYON &
KENYON PENSION PLAN, and GEORGE
BADERNOCH, MICHAEL LOUGHNANE, and
ROBERT TOBIN as fiduciaries of the KENYON &
KENYON PENSION PLAN,

Defendants

X

COUNTY OF NEW YORK)
) ss:
STATE OF NEW YORK)

CHARLES BRAINARD, under penalty of perjury, declares as follows:

1. I am the plaintiff in this matter. I make this declaration in Opposition to Defendants' Motion to (1) Dismiss Counts I & II of the Complaint, or, in the Alternative, (2) Stay Count I and Refer Count II to Arbitration.
2. Attached as Exhibit A is a true copy of my Withdrawal Agreement with Kenyon & Kenyon ("Firm"), dated September 5, 2003. (B00001-B00004)
3. Attached as Exhibit B is a true copy my first "of counsel" agreement with the Firm, which covered the period October 1, 2003 to September 30, 2005. (B00005-B00006)
4. Attached as Exhibit C is a true copy my second "of counsel" agreement with the Firm, which covered the period October 1, 2005 to September 30, 2006. (B00007-B00008)
5. Attached in Exhibit D is a true copy of the September 1990 Agreement referenced in paragraph 10 of the Complaint. Exhibit D includes the following:

(a) September 12, 1990 Memorandum from Thierfelder to the Partners with attachments, including the July 20, 1990 WTR Kenyon & Kenyon Retirement Plan Study - B00009-B00023

(b) July 20, 1990 WTR Kenyon & Kenyon Retirement Plan Study - B00015-B00023

(c) October 11, 1990 Brainard Election Form - B00024

(d) October 11, 1990 Memorandum from Thierfelder to Partners - B00025-B00033.

6. Attached as Exhibit E is a true copy of the September 2003 Memorandum (B00034-B00044) referenced in paragraph 11 of the Complaint.

7. Attached as Exhibit F is a true copy of the July 2005 Memorandum (B00045-B00048) referenced in paragraph 13 of the Complaint.

8. Attached as Exhibit G are true copies of the e-mails of October 3, 2006 and October 12, 2006 (B00049-B00050) that are referenced in paragraphs 1 and 24 of the Complaint.

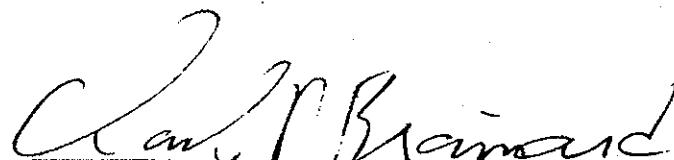
9. Attached as Exhibit H is a true copy of my Earnings Statement from the Firm for the pay period ending December 31, 2006. (B00051)

10. Attached as Exhibit I is a true copy of my Statement of Earnings from the Firm for the pay period ending October 15, 2007. (B00052)

11. Attached as Exhibit J (B00053) is a true copy of the letter from the Firm, dated March 31, 2004, which provides the final calculation of my interests in the Firm, including the value of my memorandum accounts, as of September 30, 2003. This letter "bec[ame] part" of the Withdrawal Agreement, Ex. A at 3 (B00003), which constituted "a complete settlement of all monies due [me] under the Continuing Firm Agreement and any prior Firm agreements." Id. at 1 (B00001).

I declare under penalty of perjury that the information contained in this declaration is true and correct.

Dated: New York, New York
January 15, 2008.


Charles Brainard